

Applicant: Hermann D. Funke  
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### REMARKS

In the above referenced Office Action pending claims 22-39 stand rejected under 35 USC 112 and 35 USC 103.

Herein independent claims 22 and 29 have been amended without prejudice or disclaimer of the subject matter contained therein.

Applicant respectfully requests entry and favorable consideration of the amendments and remarks presented herewith.

#### **Claim Rejection Under 35 U.S.C. §112**

Claims 22-39 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Specifically, the Examiner alleges that previous claim amendments introduced new matter. In accordance with the forgoing, the claims have been amended to obviate the rejection. Applicant respectfully requests withdrawal of the rejection.

#### **Provisional Obviousness-type Double Patenting Rejection**

Since the claims are pending, Applicant simply refutes the rejection for the time-being.

#### **Claim Rejections Under 35 U.S.C. 103**

Claims 22-39 stand rejected under 35 U.S.C. §103 as rendered obvious over EP 0931566 to Vock (Vock). Applicant traverses the rejection. Vock fails to teach, suggest or imply determining if a high frequency radiation interference signal exceeds a preselected HF radiation threshold. Vock merely indicates the onset of interference is detected. Vock makes no suggestion, explicitly or implied, of detecting a high frequency radiation interference signal and determining whether that signal exceeds a threshold.

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The Examiner asserts that it would have been obvious to one having ordinary skill in the art to modify the pacemaker as taught by Vock with the detection of an interference signal being a HF radiation signal. Furthermore, Vock makes no suggestion, explicitly or implied, for determining if a detected signal exceeds a HF radiation interference threshold. If indeed the elements were known in the art, then the Examiner ought to present evidence to support that conclusion. In re Lee, 61 USPQ2d at 1435 ("[W]hen they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record."). The failure to do so renders the Examiner's rejection arbitrary, capricious and unreasonable. See id. at 1434. The Examiner may not arbitrarily, capriciously and unreasonably deny a claim by a mere declaration of obviousness without a supporting evidentiary record.

Applicant respectfully asserts that Vock fails to teach or suggest the limitations recited in the pending claims, and thus the rejection is improper and should be withdrawn.

### CONCLUSION

Applicant respectfully asserts that all pending claims 22-39 of the present application are now in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Respectfully submitted,

Date:

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